

B. DETERMINING INCAPACITY BASED ON MEDICAL EVIDENCE – THE PEP PROCESS

Effective August 1, 2001

WAC 388-448-0020 How and from whom you can get medical evidence for incapacity determination.

Before we can decide if you are eligible for GAU, you must give us medical evidence that meets the requirements in WAC 388-448-0030. Medical evidence provides us with the details of your impairment and how it affects your ability to be gainfully employed. If you cannot get medical evidence without cost to you and you are otherwise eligible according to WAC 388-400-0025, we will pay the fees or other expenses based on our published policies and payment limits.

We accept medical evidence from the sources listed below:

- (1) For a physical impairment, we only accept reports from the following licensed medical professionals as primary evidence:
 - (a) A physician;
 - (b) An advanced registered nurse practitioner (ARNP) in the ARNP's area of certification;
 - (c) The chief of medical administration of the Veterans' Administration, or their designee, as authorized in federal law; or
 - (d) A physician assistant when the report is co-signed by the supervising physician.
- (2) For a mental impairment, we only accept reports from one of the following licensed professionals as primary evidence:
 - (a) A psychiatrist;
 - (b) A psychologist;
 - (c) An advanced registered nurse practitioner when certified in psychiatric

nursing;

- (d) A person who provides mental health services in a community mental health services agency and meets the minimum mental health professional qualifications set by them, which consist of having a Master's degree and two years experience; or
 - (e) The physician who is currently treating you for a mental disorder.
- (3) **"Supplemental medical evidence"** means a report from a practitioner that can be used to support medical evidence given by any of the practitioners listed in subsections (1) and (2) of this section. We accept as supplemental medical evidence reports from:
- (a) A practitioner who is providing on-going treatment to you, such as a chiropractor, nurse, physician assistant; or
 - (b) State institutions and agencies that are providing or have provided services to you.

WAC 388-448-0030 The kind of medical evidence you need to provide for determination of incapacity.

You must provide medical evidence that clearly explains what physical or mental health problem you have that incapacitates you. **"Impairment"** means any diagnosable physical or mental condition except alcoholism or drug addiction. The following describes how we decide if the medical evidence that you provide regarding your impairment meets the requirements:

- (1) We only accept written medical evidence. It must contain clear, objective medical documentation that includes:
 - (a) A diagnosis for the incapacitating condition;
 - (b) The effect of the condition on your ability to perform work-related activities; and
 - (c) Relevant medical history and sufficient medical documentation to support

conclusions of incapacity.

- (2) The medical evidence must be based on an exam within the last ninety days.
- (3) When making an incapacity decision, we do not use your report of symptoms as evidence unless medical findings show there is a medical condition that could reasonably be expected to produce the symptoms reported. In those cases, you must provide us with clear and objective medical information, including observation by the medical practitioner and relevant medical history that supports conclusions about:
 - (a) The existence and persistence of the symptom(s); and
 - (b) Its effect on your ability to perform basic work activities.
- (4) We decide incapacity based solely on the objective information we receive. We are not obligated to accept a decision that you are incapacitated or unemployable made by another agency or person.

WAC 388-448-0035 How we assign severity ratings to your impairment.

- (1) **"Severity rating"** means a rating of the extent of your incapacity, and how severely it impacts your ability to perform the basic work activities. Severity ratings are assigned in Steps II through IV of the PEP. The following chart provides a description of levels of limitations on work activities and the severity ratings that would be assigned to each.

Effect on work activities	Severity rating
(a) There is no effect on your performance of basic work-related activities.	1
(b) There is no significant effect on your performance of basic work-related activities.	2
(c) There are significant limits on your performance of at least one basic work-related activity.	3
(d) There are very significant limits on your performance of at least one basic work-related activity.	4
(e) You are unable to perform at least one basic work-	5

related activity.	
<p>(2) We use the severity rating given by the medical evidence provider:</p> <ul style="list-style-type: none"> (a) If the rating is supported by and consistent with the medical evidence; (b) If the provider's assessment of your limitations is consistent with our definition of the rating; and (c) If the rating is consistent with other medical evidence provided to us. <p>(3) If the medical evidence provider assigns a severity rating that is not consistent with the objective evidence and your symptoms from your impairment as described in the medical evidence, we take the following action:</p> <ul style="list-style-type: none"> (a) If your limitations are more severe than the rating given, we raise your severity rating; or (b) If your limitations are less severe than the rating given, we lower your severity rating; and (c) We give clear and convincing reasons for adjusting the rating. 	

WAC 388-448-0040 PEP step I--Review of medical evidence required for eligibility determination.

When we receive your medical evidence, we review it to see if it is complete and to decide whether your circumstances match GAU program requirements.

- (1) We require a written medical report to determine incapacity. The report must:
 - (a) Contain sufficient information as described under WAC 388-448-0030;
 - (b) Be written by an authorized medical professional;
 - (c) Document the existence of a potentially incapacitating condition; and

- (d) Indicate an impairment is expected to last ninety days or more from the application date.
- (2) If the information received is not clear, we may require more information before we decide your ability to be gainfully employed. As examples, we may require you to get more medical tests or be examined by a medical specialist.
- (3) We deny incapacity when:
 - (a) There is only one impairment with a severity rating less than three;
 - (b) A reported impairment is not expected to last ninety days (twelve weeks) or more from the date of application;
 - (c) The practitioner is not able to determine that the physical or mental impairment would remain incapacitating after at least sixty days of abstinence from alcohol and drugs; or
 - (d) We do not have clear and objective medical evidence to approve incapacity.

WAC 388-448-0050 PEP step II -- How we determine the severity of mental impairments.

If you are diagnosed with a mental impairment, we use information from the provider to determine if your impairment prevents you from being gainfully employed. We review the psychological evidence to determine the severity of your mental impairment.

- (1) The severity of your mental impairment is based on:
 - (a) Psychosocial and treatment history;
 - (b) Clinical findings;
 - (c) Results of psychological tests; and
 - (d) Symptoms observed by the examining practitioner that show impairment of

your ability to perform basic work-related activities.	
(2) If you are diagnosed with mental retardation, the diagnosis must be based on the Wechsler Adult Intelligence Scale (WAIS). The following test results determine the severity rating:	
Intelligence quotient (IQ) score	Severity rating
85 or above	1
71 to 84	3
70 or lower	5
(3) If you are diagnosed with a mental impairment with physical causes, we assign a severity rating based on the most severe of the following three areas of impairment:	
(a) Memory defect for recent events;	
(b) Impoverished, slowed, perseverative thinking, with confusion or disorientation; or	
(c) Labile, shallow, or coarse affect.	
(4) We base the severity of the functional psychotic or nonpsychotic disorder, excluding alcoholism or drug addiction, on:	
(a) Clinical assessment of these twelve symptoms: depressed mood, suicidal trends, verbal expression of anxiety or fear, expression of anger, social withdrawal, motor agitation, motor retardation, paranoid behavior, hallucinations, thought disorder, hyperactivity, preoccupation with physical complaints; and	
(b) Clinical assessment of the intensity and pervasiveness of your symptoms and their effect on work activities.	
(5) We base the severity rating for a functional mental impairment on accumulated severity ratings for the twelve symptoms in subsection (4)(a) of this section as follows:	
Symptom ratings or condition	Severity rating
(a) The functional mental impairment is diagnosed with psychotic	3

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features;	
(b) You have had two or more hospitalizations for psychiatric reasons in the past two years;	
(c) You have had more than six months of continuous psychiatric hospital or residential treatment in the past two years;	
(d) The overall assessment of symptoms is rated three; or	
(e) At least three symptoms are rated three or higher.	
(f) The overall assessment of symptoms is rated four; or	4
(g) At least three symptoms are rated four or five.	
(h) The overall assessment of symptoms is rated five; or	5
(i) At least three symptoms are rated five.	
(6) If you have more than one type of mental impairment, we assign a severity rating as follows:	
Condition	Severity rating
(a) Two or more disorders with ratings of three; or	4
(b) One or more disorders rated three; and one rated four.	
(c) Two or more disorders rated four.	5
(7) We deny incapacity when you do not have a significant physical impairment and your overall mental severity rating is one or two;	
(8) We approve incapacity when you have an overall mental severity rating of five, regardless of whether you have a physical impairment.	

WAC 388-448-0060 PEP step III--How we determine the severity of physical impairments.

We must decide if your physical impairment is serious enough to limit your ability to be gainfully employed. "Severity of a physical impairment" means the degree that an impairment restricts you from performing basic work-related activities (see WAC 388-448-0010). Severity ratings range from one to five, with five being the most severe. We will assign severity ratings according to the table in WAC 388-448-0035.

- (1) We assign to each physical impairment a severity rating that is supported by medical evidence.
- (2) If your physical impairment is rated two, and there is no mental impairment or a mental impairment that is rated one, we deny incapacity.
- (3) If your physical impairment is consistent with a severity rating of five, we approve incapacity.

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WAC 388-448-0070 PEP step IV--How we determine the severity of multiple impairments.

- (1) If you have more than one impairment we decide the overall severity rating by deciding if your impairments have a combined effect on your ability to be gainfully employed. Each diagnosis is grouped by affected organ or function into one of thirteen "body systems." The thirteen body systems consist of:
 - (a) Musculo-skeletal,
 - (b) Special senses and speech,
 - (c) Respiratory,
 - (d) Cardiovascular,

<p>(e) Digestive,</p> <p>(f) Genito-urinary,</p> <p>(g) Hemic and lymphatic,</p> <p>(h) Skin,</p> <p>(i) Endocrine and obesity,</p> <p>(j) Neurological,</p> <p>(k) Mental disorders,</p> <p>(l) Neoplastic, and</p> <p>(m) Immune systems.</p> <p>(2) We follow these rules when there are multiple impairments:</p> <p>(a) We group each diagnosis by body system.</p> <p>(b) When you have two or more diagnosed impairments that limit work activities, we assign an overall severity rating as follows:</p>	
Your condition	Severity rating
(i) All impairments are in the same body system, are rated two and there is no cumulative effect on basic work activities.	2
(ii) All impairments are in the same body system, are rated two and there is a cumulative effect on basic work activities.	3
(iii) All impairments are in different body systems, are rated two and there is a cumulative effect on basic work activities.	

(iv)	Two or more impairments are in different body systems and are rated three.	4
(v)	Two or more impairments are in different body systems; one is rated three and one is rated four.	
(vi)	Two or more impairments in different body systems are rated four.	5
<p>(c) We deny incapacity when the overall severity rating is two.</p> <p>(d) We approve incapacity when the overall severity rating is five.</p>		

WAC 388-448-0080 PEP step V--How we determine your ability to function in a work environment if you have a mental impairment.

If you have a mental impairment we evaluate your cognitive and social functioning in a work setting. Functioning means your ability to perform the tasks that would be required of you on the job and your ability to get along with your co-workers, supervisors and other people you would be in contact with while on the job.

- (1) We evaluate cognitive factors by assessing your ability to:
 - (a) Understand, remember, and follow simple, one- or two-step instructions;
 - (b) Understand, remember, and follow complex instructions, with three or more steps;
 - (c) Learn new tasks;
 - (d) Exercise judgment and make decisions; and
 - (e) Perform routine tasks without undue supervision.
- (2) We approve incapacity when the practitioner's evaluation shows you are:
 - (a) At least moderately impaired in your ability to understand, remember, and

- follow simple instructions and at least moderately limited in your ability to:
- (i) Learn new tasks, exercise judgment, and make decisions; and
 - (ii) Perform routine tasks without undue supervision; or
- (b) Able to understand, remember, and follow simple instructions, but are:
- (i) At least moderately impaired in the ability to understand, remember, and follow instructions with three or more steps; and
 - (ii) Markedly impaired in the ability to learn new tasks, exercise judgment and make decisions, and perform routine tasks without undue supervision.
- (3) The practitioner's evaluation reports your social factors after assessing your ability to:
- (a) Relate appropriately to coworkers and supervisors;
 - (b) Relate appropriately in contacts with the public;
 - (c) Tolerate the pressures of a work setting;
 - (d) Perform self-care activities, including personal hygiene; and
 - (e) Maintain appropriate behavior in a work setting.
- (4) We approve incapacity if you are rated at least two in one area of social functioning and at least three in all other areas of social functioning.

WAC 388-448-0090 PEP step V--How we determine your ability to function in a work environment if you have a physical impairment.

In Step V of the PEP we review the medical evidence you provide and make a determination of how your physical impairment prevents you from working. This determination is then used in Steps VI and VII of the PEP to determine your ability to

perform either work you have done in the past or other work.

- (1) **"Exertion level"** means the ability to lift, carry, stand and walk with the strength needed to fulfill job duties in the following work categories. For this section, "occasionally" means less than one-third of the time and "frequently" means one-third to two-thirds of the time. We only consider your strength, mobility, and flexibility. We review any work limits you have in the following areas, and then assign an exertion level and determine exertional limitations. The following table is used to determine your exertion level.

Included in this table is a strength factor, which is your ability to perform physical activities, as defined in Appendix C of the Dictionary of Occupational Titles (DOT), Revised Edition, published by the U.S. Department of Labor.

If you	Then we assign this exertion level
(a) Can not lift at least two pounds or stand and/or walk.	Severely limited
(b) Can lift ten pounds maximum and frequently lift and/or carry lightweight articles. Walking and standing are only required for brief periods.	Sedentary
(c) Can lift twenty pounds maximum and frequently lift and/or carry objects weighing up to ten pounds. Walk six out of eight hours per day or stand during a significant portion of the workday, with sitting and pushing/ pulling arm or leg movements most of the day.	Light
(d) Can lift fifty pounds maximum and frequently lift and/or carry up to twenty-five pounds.	Medium
(e) Can lift one hundred pounds maximum and frequently lift and/or carry up to fifty pounds.	Heavy

- (2) **"Exertionally-related limitation"** means a restriction in mobility, agility or flexibility in the following twelve activities: balancing, bending, climbing, crawling, crouching, handling, kneeling, pulling, pushing, reaching, sitting, and stooping. If you have exertionally-related limitations, we consider them in determining your ability to work.

- (3) **"Functional physical capacity"** means the degree of strength, agility, flexibility,

and mobility you can apply to work-related activities. We consider the effect of the physical impairment on the ability to perform work-related activities when the physical impairment is assigned an overall severity rating of three or four. We determine functional physical capacity based on your exertional, exertionally related and non-exertional limitations. All limitations must be substantiated by the medical evidence and directly related to the diagnosed impairment(s).

- (4) **"Nonexertional physical limitation"** means a restriction on work activities that does not affect strength, mobility, agility, or flexibility. Examples are:
- (a) Environmental restrictions which could include, among other things, your inability to work in an area where you would be exposed to chemicals; and
 - (b) Workplace restrictions, such as impaired hearing or speech, which would limit the types of work environments you could work in.

WAC 388-448-0100 PEP step VI -- How we evaluate capacity to perform relevant past work.

If your overall severity rating is three or four and we have reached this stage of the PEP and have not approved or denied your application, we decide if you can do the same or similar work as you have done in the past. We look at your current physical and/or mental limitations and vocational factors to make this decision. Vocational factors are education, relevant work history, and age.

- (1) We evaluate education in terms of formal schooling or other training that enables you to meet job requirements. We classify education as:

If you	Then your education level is
(a) Can not read or write a simple communication, such as two sentences or a list of items.	Illiterate
(b) Have no formal schooling beyond the eleventh grade; or	Limited education
(c) Have participated in special education.	
(d) Have received a high school diploma or general	High school and above level

(e) equivalency degree (GED); or Have received skills training and were awarded a certificate, degree or license.	of education
<p>(2) We evaluate your work experience to determine if you have relevant past work. "Relevant past work" means work that:</p> <p>(a) Is normally done for pay or profit. We exclude work done in a sheltered workshop, a job where you were given special consideration, or activities you may have performed as a student or homemaker;</p> <p>(b) Has been performed in the past five years; and</p> <p>(c) You have done long enough for you to have acquired the knowledge and skills to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.</p> <p>(3) For each relevant past work situation you have had, we determine:</p> <p>(a) The exertional or skill requirements of the job; and</p> <p>(b) Current cognitive, social, or nonexertional factors that significantly limit your ability to perform past work.</p> <p>(4) After considering vocational factors, we approve or deny incapacity based on the following:</p>	
If you	Then we take this action on incapacity
(a) Have the physical or mental ability to perform past work and there is no significant cognitive, social or nonexertional limitation.	Deny
(b) Have recently acquired specific work skills through completion of vocational training, enabling you to work within your current physical or mental capacities.	Deny
(c) Are fifty-five years of age or older and have an	Approve

impairment that is assigned an overall severity rating of at least three and do not have the physical or mental ability to perform past work or do not have work experience.	
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WAC 388-448-0110 PEP step VII -- How we evaluate your capacity to perform other work.

If we decide you cannot do work that you've done before, we then decide if you can do any other work. In making this decision, we again consider vocational factors of age, education and limited English proficiency (LEP).

- (1) We approve incapacity if you have a physical impairment only and meet the vocational factors below:

Highest work level assigned by the practitioner	Your age	Your education level	Other vocational factors
Sedentary	Any age	Any level	Does not apply
Light	Fifty and older	Any level	Does not apply
Light	Thirty-five and older	Illiterate or LEP	Does not apply
Light	Eighteen and older	Limited education	Does not have any past work
Medium	Fifty and older	Limited education	Does not have any past work
Medium	Fifty-five and older	Any level	Does not apply
Heavy	Fifty-five and older	Any level	Environmental restrictions apply

- (2) We approve incapacity when you have a mental impairment only and meet the age and social functioning limitations below:

Social limitations	Age
(a) Cannot appropriately relate to coworkers and supervisors (rated three); and	Fifty years and older
(b) Cannot tolerate the pressures of a work setting	

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(rated four).		
(c)	Cannot tolerate the pressures for a work setting (rated five).	Eighteen to fifty-four
(d)	A mental disorder severity rated four;	Eighteen to forty-nine
(e)	One or more symptoms from WAC 388-448-0050(4) (rated five);	
(f)	Cannot appropriately relate to coworkers and supervisors (rated three); and	
(g)	Cannot tolerate the pressures of a work setting (rated four).	
(3) We approve incapacity when you have both mental and physical impairments and vocational factors interfere with working as follows:		
Your age	Your education	Your other restrictions
Any age	Any level	(a) Can not appropriately relate to coworkers and supervisors (rated three; and (b) Can not tolerate pressures of a work setting (rated four).
Fifty or older	Limited education	(c) Restricted to medium work level or less.
Eighteen to forty-nine	Limited education	(d) Restricted to light work level.
(4) If we do not find that you are incapacitated by the end of Step VII of the PEP, an administrative review team (ART) makes the incapacity decision. The review team consists of two or more persons within the community service office (CSO) who are not in the position of providing direct eligibility or incapacity services to you. The ART reviews the medical evidence and your vocational factors.		

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WAC 388-448-0120 How we decide how long you are incapacitated.

We use the medical evidence and expected length of recovery from the incapacitating condition to decide the length of time you are eligible for GAU as follows:

- (1) If you are eligible for GAU, a maximum of twelve months; or
- (2) If we decide you are eligible for general assistance expedited Medicaid (GAX), a maximum of thirty-six months from the date of the latest incapacity approval.